

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

No. 05-CV-10642-WGY

Steven Dearborn, pro se, )  
Plaintiff, )  
 )  
vs. )  
 )  
Barnstable County Commissioners, et al, )  
Defendants. )

PLAINTIFF'S MOTION REQUESTING LEAVE  
TO AMEND COMPLAINT

Now comes the Plaintiff, pro se, in the above captioned matter and moves this Honorable Court, pursuant with the Federal Rules of Civil Procedure, Rule 15(A), to grant Plaintiff's request for LEAVE TO AMEND COMPLAINT. Plaintiff relies on the following to support such request to this court.

INTRODUCTION

1. Plaintiff filed this action originally in State Court on 1/14/2005 challenging the Defendant's Policy on their use of restraints at the Barnstable County House of Corrections("BCHOC" herein after) disciplinary units.
2. This action was removed to this court by the Defendants. Since then, Plaintiff filed several Motions including the most recent MOTION TO

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AMEND COMPLAINT which was denied by this court on July 19, 2005.

3. Plaintiff has also filed a Motion for Summary Judgment which presently awaits the court's decision. At this point, Plaintiff can only assume that because FRCP Rule 15A states that a Motion to Amend Complaint, under these circumstances, must be made only by request to the court, that this was the reason for denying his motion.
4. Plaintiff states that the court gave no reason why such motion was denied, and because Plaintiff was unaware of this specific requirement in Rule 15 (A), that he should be allowed to make this request for a LEAVE TO AMEND.
5. Plaintiff states that he lacks the skills to litigate properly, but because he was denied counsel by the State Court, he must continue this action PRO SE. The only alternative, is to voluntarily drop this complaint, which Plaintiff refuses to do.

#### FACTS

6. Defendants have attempted to claim and persuade this court, that the reason Plaintiff was forced to shower while in handcuff restraints, and exercise in both handcuffs and leg-irons, was because of past acts, or behavior.
7. Plaintiff states that these alleged past acts, even if true, were not the reason he was forced to shower and exercise in restraints.
8. Plaintiff reasserts, that the reason he was forced to comply with this requirement, is because Defendants policy on restraints in their disciplinary units, is a "blanket-policy" which has no "rational basis for determining, or drawing distinction with the regard to the use of these restraints" as discussed in Thielman v Leean 282 F. 3d 478 (March 4, 2002.
9. Plaintiff states that **all inmates** in Defendants disciplinary units are required to be in "full-restraints" (handcuffed and in leg-irons) during their only hour out of cells, which is supposed to be for the exercise which is not possible while in such restraints. Inmates are also required to be in handcuff restraints while showering. These requirements apply to all inmates, regardless of any past acts, etc. This practice is unheard of in any other state or county facilities in the state of Massachusetts, and should not be practiced here in Barnstable County House of Correction. There is no decisionmaking involved in the process. The Defendant's are relieved of that necessity, which is also unheard of.

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10. Plaintiff states that he was deprived of exercise and that there was no reason why he, or any of the other inmates (see Exhibits, had C-1 through C-10), to be handcuffed while showering, as it was not necessary, especially when the shower door was locked and had been equipt with a "slot" specifically designed so that the inmate could put his arms through to be uncuffed.
11. The Defendants policy violates Plaintiffs rights, as well as all others who continue to be deprived of their rights. Inmates have the right to exercise for one hour, five times per day, while in segregation units. No other correctional facilities in Massachusetts, state or county, force inmates to shower in handcuffs.
12. Plaintiff was also threatened by the Deputy Superintendant, that if he took this issue further, there would be consequences. Plaintiff was threatened while discussing an appeal to his inmate grievence, which is a requirement under 42 USC § 1997e (Prison Litigation Reform Act). Without this procedure for legitimate complaints by inmates, there is no redress or remedies to any complaint.
13. Plaintiff states that because his original complaint may have defects, and may also fail to state a claim or cause for action, that he may need to amend his complaint to conform to the evidence and to properly state such claims.
14. Plaintiff states that because he failed to request a LEAVE TO AMEND COMPLAINT, such request should now be considered. The defects in his original complaint and in his previous Motion to Amend, must be corrected, and cured.

MEMORANDUM OF LAW

15. Rule 15 (A), states that "leave shall be freely given when justice so requires."
16. Rule 15 (B), states that such amendments of pleadings as may be necessary to cause them to conform to the evidence, and to raise these issues, may be made upon motion of any party at any time."

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17. Rule 15 (c), states that "claim or defense asserted in the Amended pleading arose out of the same conduct, transaction, or occurrences set forth in the original pleading." and in the Plaintiffs case, all issues to be stated in an Amended Complaint are already supported in the original copmlaint, but need to be properly stated as a cause of action and in a claim to which relief may be granted. Plaintiff states that this may be necessary.
18. "Function of Rule 15 is to provide parties opportunity to assert nnew matters that may have been known to them at the time they filed their original pleading." Johnson v. Helicopter & Airplane Services Corp. (1974, DC MD) 389 F. Supp. 509, 20 FR Serv. 2d 326.
19. "Amended pleadings which are governed by Rule 15 (a), set forth matters occurring prior to date of original pleading but omitted from that pleading." United States v. International Business Machines Corp. (19-75, SD NY) 66 FRD 223, 1975-1 CCH Trade Cases, ¶ 60104, 19 FR Serv. 2d 783.
20. "It is implicit in Rule 15, that plaintiff may amend his coplaint only to add matters that would otherwise have been proper to include in the original complaint." Martinez v. Safeway Stores, Inc. (1975, ND Cal) 66 FRD 446, 11 BNA FEP Cas 1248, 10 CCH EDD p. 10348, 20 FR Serv. 2d 991.
21. "Considering Policy of liberality behind Rule 15, court which fails to even consider Motion to Amend, much less grant it, has abused it's discretion. Marks v. Shell Oil Co. (1987, CA 6 Mich) 830 F. 2d 68, 9FR Serv. 3d 593.

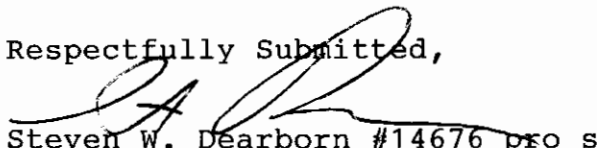
#### CONCLUSION

22. Plaintiff states that because of the defects in original complaint, and because he was not aware of the requirements in Rule 15, the court should allow him to LEAVE TO AMEND COMPLAINT.
23. Plaintiff states that DENIED Motion to Amend, should be stricken from the record pending a new one, if allowed to do so by this court.

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WHEREFORE, Plaintiff requests that his MOTION for REQUEST TO LEAVE be granted in light of the facts and considering the circumstances of Plaintiffs PRO SE legal skills, or lack of. Plaintiff humbly regrets the inconveniences that may have been caused by his lack of ability to litigate properly, and hopes that such delays will not occur in the future proceedings of this action in this court.

Respectfully Submitted,

  
Steven W. Dearborn #14676 pro se  
6000 Sheriff's Place  
Bourne, Massachusetts 02532

Dated: August 4, 2005

cc. file

CERTIFICATE OF SERVICE

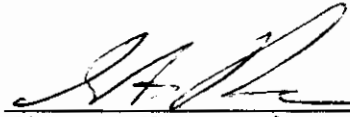
I, Steven W. Dearborn, Plaintiff, do hereby certify that on this day, I served a true copy of the enclosed MOTION FOR REQUEST TO LEAVE TO AMEND COMPLAINT to the Defendants, by mailing same, postage paid, by placing such into a U.S. mailbox at the Barnstable House of Correction, Unit POD-K. first-class mail.

Copies were mailed to:

Robert S. Troy  
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David J. Rentsch  
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Dated: 8/4/2005

  
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